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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,949	12/06/2005	Mark Frazer	213222.00096	4906
27160	7590	11/24/2010	EXAMINER	
KATTEN MUCHIN ROSENMAN LLP (C/O PATENT ADMINISTRATOR) 2900 K STREET NW, SUITE 200 WASHINGTON, DC 20007-5118			KIM, TAE K	
ART UNIT	PAPER NUMBER			
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/520,949	<b>Applicant(s)</b> FRAZER, MARK
	<b>Examiner</b> TAE K. KIM	<b>Art Unit</b> 2492

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on September 15, 2010.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 71-77 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 71-77 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
- 4) Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

This is in response to the Applicant's response filed on September 15, 2010. All previous claims have been cancelled by the Applicant. Claims 71 – 77 have been added by the Applicant. Claims 71—77, where Claim 71 is in independent form, are presented for examination.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 71 – 77 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not clearly describe that "a software application executing on the client computer system can select the predefined criteria for the client protocol stack from a set of predefined criteria, each predefined set of criteria being suitable for a different set of transmission circumstances and software application types." If the Applicant disagrees, the Examiner requests that the portions of the specification to support these limitations be cited.

#### ***Response to Arguments***

Applicant's arguments filed September 15, 2010 have been fully considered but they are moot based on the new grounds of rejection as stated below.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 71 – 77 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,181,700 (hereinafter “Doi”).**

2. Regarding Claim 71, Doi discloses a system for providing reliable transport of data between a client computer system and a server computer system through a computer network [Col. 3, lines 14-22], comprising:

a server protocol stack executing at the server computer system [Fig. 4];  
a client protocol stack executing at the client computer system and communicating with the server protocol stack through the computer network [Fig. 4], the client protocol stack and server protocol stack cooperating to determine successful transmission of data between the client computer system and the server computer system and to appropriately retransmit data between the client computer system and the server computer system upon a determined failure [Col. 3, lines 24-31; Col. 4, lines 47-49]; and

wherein the determination of a failure in transmission is performed with reference to predefined criteria and wherein a software application executing on the client computer system can select the predefined criteria for the client protocol stack from a set of predefined criteria, each predefined set of criteria being suitable for a different set

of transmission circumstances and software application types [Col. 9, line 53 - Col. 10, line 15].

3. Regarding Claim 72, Doi discloses all the limitations of Claim 71 above. Doi further discloses that the set of predefined criteria includes definitions for retransmission timeout intervals and permitted number of failed transmissions [Col. 10, lines 16-28].

4. Regarding Claim 73, Doi discloses all the limitations of Claim 71 above. Doi further discloses that the selection of the predefined criteria from the set of predefined criteria is in response to a data transmission metric determined at the client computer system [Col. 9, lines 9-21].

5. Regarding Claim 74, Doi discloses all the limitations of Claim 71 above. Doi further discloses that communication between the client protocol stack and the server protocol stack is achieved via sockets [Col. 7, lines 1-15].

6. Regarding Claim 75, Doi discloses all the limitations of Claim 74 above. Doi further discloses that the predefined criteria is selected by the client protocol stack when establishing a socket to the server protocol stack [Col. 7, lines 1-15].

7. Regarding Claim 76, Doi discloses all the limitations of Claim 71 above. Doi further discloses that the communication between the client protocol stack and the server protocol stack is achieved via sockets and wherein the predefined criteria selected by the client protocol stack can be changed after the socket has been established [Col. 7, lines 1-15, Col. 7 line 64 – Col. 8, line14].

8. Regarding Claim 77, Doi discloses all the limitations of Claim 76 above. Doi further discloses that the changes to the predefined criteria are made in response to changes in the data transmission metric [Col. 7 line 64 – Col. 8, line14].

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae K. Kim, whose telephone number is (571) 270-1979. The examiner can normally be reached on Monday - Friday (10:00 AM - 8:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached on (571) 272-6776. The fax phone number for submitting all Official communications is (703) 872-9306. The fax phone number for submitting informal communications such as drafts, proposed amendments, etc., may be faxed directly to the examiner at (571) 270-2979.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

/Tae K. Kim/

Tae K. Kim  
Examiner, Art Unit 2492

November 19, 2010

/JOSEPH THOMAS/  
Supervisory Patent Examiner, Art Unit 2492